

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TRACY JACKSON,)
EMMANUEL ROGERS, and)
JEROME McDONALD,)
Plaintiffs,)
v.)
ALTON & SOUTHERN)
RAILWAY COMPANY,)
Defendant.)

NOTICE REGARDING MOTION for SUMMARY JUDGMENT

PROUD, Magistrate Judge:

Defendants have filed Motions for Summary Judgment (**Docs. 43 & 44**), which are supported by a number of exhibits, including affidavits.

Lewis v. Faulkner, 689 F.2d 100 (7th Cir. 1982) holds that, when a defendant has filed a motion for summary judgment supported by exhibits, a pro se plaintiff “is entitled to receive notice of the consequences of failing to respond with affidavits to a motion for summary judgment.” *Lewis*, at 102.¹ See also, *Timms v. Frank*, 953 F.2d 281, 286 (7th Cir. 1992).

Plaintiffs are hereby notified that Fed.R.Civ.P. 56(e) provides that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered

¹The Court invites defense counsel to review the Seventh Circuit’s suggestion that it should be the practice of defense counsel to include the required notice in the motion. See, *Lewis*, at 102-103.

against the adverse party.

Lewis requires that a *pro se* plaintiff be warned that “any factual assertion in the movant's affidavits will be accepted by the district judge as being true unless the plaintiff submits his own affidavits or other documentary evidence contradicting the assertion.” *Lewis*, at 102.

Plaintiffs are hereby notified that they may not rest upon the allegations of the pleadings at this stage. Simply restating the allegations of the complaint will not defeat the motion. The Court will accept as true any factual assertion in defendants' exhibits unless plaintiffs submits their own affidavits or other documentary evidence contradicting the assertion.

Plaintiffs must file their responses to the motion for summary judgment on or before December 22, 2008.

IT IS SO ORDERED.

DATED: November 24, 2008.

s/ Clifford J. Proud
CLIFFORD J. PROUD
U.S. MAGISTRATE JUDGE